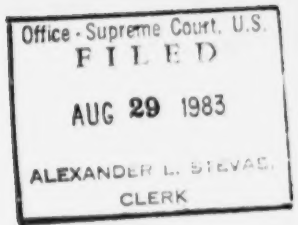


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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. A-927

JOHNNY NARCISSE,
Petitioner

VERSUS

STATE OF LOUISIANA,
Respondent

ORIGINAL BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

J. NATHAN STANSBURY
DISTRICT ATTORNEY

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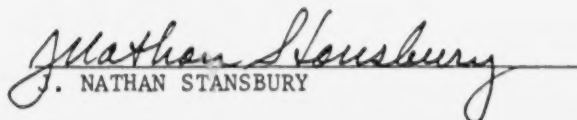
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NOTARIZED STATEMENT OF MAILING

J. Nathan Stansbury, being duly sworn, states:

1. I am District Attorney for the Fifteenth Judicial District of Louisiana, and am counsel for the State of Louisiana in the above captioned proceeding and am admitted and qualified before the Supreme Court of the United States.
2. In compliance with Rule 28.2, I am filing this notarized Statement of Mailing.
3. On August 25, 1983, I personally deposited an envelope in the United States Post Office located in the City of Lafayette, Louisiana, first class postage prepaid, and properly addressed to the Clerk of this Court containing the enclosed Brief in Opposition to Writ of Certiorari to The Supreme Court .


J. NATHAN STANSBURY

SWORN TO AND SUBSCRIBED before me, the undersigned notary, on the
25th day of August, 1983, at Lafayette, Louisiana.

Joan R. Slaughter
NOTARY PUBLIC

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QUESTIONS PRESENTED

1. Does the fact that the Louisiana State Supreme Court considered a statewide proportionality review inadequate to provide the defendant requisite due process under the United States Constitution.
2. Is the State Supreme Court Constitutionally required to review each and every aggravating factor found by the jury in support of the death penalty regardless of the fact that only one is required to support the imposition of the death penalty?

STATEMENT OF THE CASE

For brevity's sake, the State will accept the statement of facts previously given in the Writ of Certiorari prepared by Petitioner since same appears to be an accurate statement of same.

ARGUMENT

ARGUMENT ON ISSUE NO. 1:

The first issue argued by the petitioner is that the Louisiana State Supreme Court has arbitrarily and sporadically deviated between a district or parish wide review of proportionality in sentence and a statewide proportionality review in determining the validity of a death sentence imposed.

Although petitioner goes to great length trying to point out the instances in which the State Supreme Court has used a statewide review and those in which it has limited itself to a district-wide review, petitioner really fails to submit any legitimate reason as to why a state-wide review provides the defendant or petitioner with any less protection under the Constitution.

As pointed out by the petitioner, no cases of this Court have ever conclusively stated that only a district-wide comparison was constitutionally proper, but only cites cases standing for the proposition that a district-wide comparison is consistent with Constitutional safeguards.

Inasmuch as this issue has never been finally decided by this Court, certainly there is not a wealth of jurisprudence or guidance provided into arguing this point. It appears to this writer that it basically narrows to a common sense approach and this writer will attempt to approach it from that viewpoint.

Every person in the State of Louisiana is governed by the same laws as any other citizen of this State. Each such person faces the same penalties for his violent acts as well as enjoying all the same rights as any other citizen. It is incongruous to this writer that a particular law should be subject to being limited by the moral considerations, idiosyncrasy or cultural backdrop of any one particular district.

It is not difficult to take the petitioner's argument and draw it out to its logical conclusion that being in a district where no death penalty has ever been previously imposed, that therefore no death penalty could be imposed because you would never have a case, regardless of how similar, where the death penalty was imposed. Certainly, in such a comparison, if you had a prior case which was quite similar factually to the one at issue and the death penalty was not imposed, then it would be hard to justify or understand why the latter should be given the death penalty. On the other hand, if you had no such similar prior case, then what are you suppose to compare it to in deciding whether or not the death penalty should be maintained.

The State of Louisiana would contend that although a district-wide comparison may be a proper point of origin in beginning to compare the proportionality of the sentence imposed in a particular case, that it is not the only Constitutional means of review. It is difficult to understand that there can be only one Constitutionally acceptable limit of proportionality and it is submitted that Constitutionally there can be a number of considerations.

For instance, it is submitted that a Court in reviewing a death penalty in attempting to determine whether it meets the proportionality test, that this Court can consider not only cases arising within the district and/or parish involved, but can, consider cases which have been rendered in other districts and/or parishes within the same state. To do otherwise, it would appear, would put a premium on the particular moral or philosophical propensity of a particular district and thereby in fact subject a defendant to a greater penalty solely because of the area in which he committed a crime. In other words, if a particular district is by its nature quite conservative in law and order matters, and for some reasons seems to be quite willing to invoke death as a penalty for a crime, then they are setting up a proportionality standard which in affect will insure that all subsequent death penalties will be approved. However, on the other hand, if you have a district which because of its moral or philosophical standards is less inclined to impose such a penalty, then they are at the same time setting up a proportionality review which in essence would prevent the sustaining of a death penalty imposed in later cases. To that extent, you in fact fail to impose a uniform proportionality review on a state-wide basis because you are then justifying each individual district in setting up its own standards of when to impose a death penalty and when not to impose such a penalty. In that respect, although those defendants found guilty in parishes which have less of a propensity to impose a death penalty benefit therefrom, other defendants in other jurisdictions which have a higher propensity suffer from same. Therefore, it would be submitted that it is certainly proper

for a Court to not only consider a proportionality review based upon those decisions rendered in the district in question, but to look throughout the state in order to determine whether the death penalty under consideration is proportional to other similar cases from other jurisdictions.

Therefore, relative to the first issue raised by petitioner, the State of Louisiana would submit that it is certainly proper for the Court to consider a state-wide proportionality review standard and that the State Supreme Court doing so in this particular case is Constitutionally permissible and does not justify the granting of the Writ of Certiorari.

ARGUMENT ON ISSUE NO. 2

The next issue raised by petitioner is that although the jury voted unanimously in finding two statutory aggravating circumstances in this case, that the State Supreme Court erred in only reviewing in depth one of the two in order to sustain the death penalty imposed.

In the State of Louisiana, aggravating circumstances are defined in Code of Criminal Procedure Article 905.4 which article lists nine independent factors which can be considered as aggravating and justifying the imposition of the death penalty. The two circumstances pertinent to this case are;

- (a) The offender was engaged in the perpetration or attempted perpetration of aggravated rape, aggravated kidnapping, aggravated burglary, aggravated arson, aggravated escape, armed robbery or simple robbery;

* * *

(g) The offense was committed in an especially heinous, atrocious, or cruel manner; or

* * *

In this particular case, the jury stated that they had found unanimously the existence of two above listed aggravating circumstances. As a result thereof, they recommended the imposition of the death penalty which was in fact imposed by the presiding judge.

Upon appellate review, the State Supreme Court in essence avoided the issue of firmly deciding whether or not this particular crime was in fact committed in an especially heinous, cruel or atrocious manner and to some degree indicated or implied that they did not find it to have been such. However, they further reviewed the facts and concluded that the jury was correct in finding the existence of the first aggravating circumstance, i.e. that the defendant was engaged at the time of the killing in the perpetration of an armed robbery.

A review of the facts of this case will clearly show that the jury was eminently correct reaching that decision inasmuch as items taken from the home of the deceased victim was found at the home of the defendant.

The question is whether or not the death penalty can be sustained despite the fact that the Court failed to properly review the existence of one of the aggravating circumstances or in reviewing same found it not to be applicable.

Under the statutory scheme present in Louisiana, and which is consistent to that of other jurisdictions, it is provided in Code of Criminal Article 905.3 that:

"A sentence of death shall not be imposed unless the jury finds beyond a reasonable doubt that at least one statutory aggravating circumstance exist and, after consideration of any mitigating circumstances, recommend that the sentence of death be imposed. The jury shall be furnished with a copy of the statutory aggravating and mitigating circumstances."

It is clear that under the statutory scheme present in Louisiana, that the jury need only find beyond a reasonable doubt one aggravating circumstance in order to support the imposition of the death penalty. Therefore, the Louisiana State Supreme Court is logically correct in concluding that if upon review of the record the evidence clearly shows that reasonable men could not have differed or reached a different conclusion and that beyond a reasonable doubt any one of numerous aggravating circumstances are supported by the evidence, then the death penalty should be sustained.

The petitioner ingenuously argues that we are not aware of which jurors may have voted for the imposition of the death penalty based primarily upon their finding of the aggravating circumstance which was not properly reviewed or which for some reason may have been invalid. However, without a further requirement that each juror state specifically which aggravating circumstances they rely upon in imposing the death penalty, such questions may never be answered in any case where more than one aggravating circumstance is found. Certainly, should this Court decide that that is what is required, then certainly such an inquiry would be Constitutionally mandated. However, although this Court is seeking to arrive at a just and equitable standard of review in order to make certain that the death penalty is only imposed based upon objective, valid and substantial considerations, it is submitted that such a requirement is undesirable.

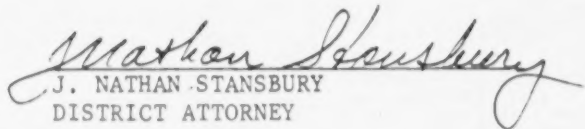
It is submitted that the rights of the defendant are adequately safeguarded by the fact that the jury must unanimously vote to find the existence of an aggravating circumstance before they can impose the death penalty and further are directed by the Court that they must consider all mitigating circumstances which are submitted on behalf of the defendant. If the jurors are required to vote unanimously in order to find the existence of an aggravating circumstance, then certainly their finding of same implies that each individual juror felt beyond a reasonable doubt that that aggravating circumstance was present. It is further logical to assume that by their finding such an aggravating circumstance and further voting in favor of the death penalty implies that in their mind anyone of the aggravating circumstances voted for would have been sufficient to support their verdict. Certainly, if a juror felt that a particular aggravating circumstance either was not proved or was not sufficient to justify in his mind the imposition of the death penalty, then his first inclination would be to vote against the finding of that aggravating circumstance or to vote against the death penalty.

The petitioner argues that the Court should be required to review each and every individual aggravating circumstance relied upon by the jury and that by such a process would be able to justly determine the issues. However, that is not in fact the case. Even if the Court were to employ such a scope of review, it still would not answer the issue presented by him and that is which particular aggravating circumstance did each individual juror rely upon in arriving at the verdict of the death penalty. Therefore, it is submitted that in essence what the petitioner is asking is that this Court mandate that it is Constitutionally required that each individual juror indicate in some fashion which particular aggravating circumstance

he relies upon primarily or solely in deciding to impose the verdict of death. It is submitted that such is not Constitutionally required and that the defendant-petitioner is adequately safeguarded by the factors mentioned above and of which they are directed by the Court during the course of his instructing the jury as to their duties and functions.

For the above reasons, it is submitted that there is no legitimate issue to be presented to the Court and that for those reasons, the Writ of Certiorari filed on behalf of petitioner should be dismissed.

Respectfully submitted,


J. NATHAN STANSBURY
DISTRICT ATTORNEY